

KOBAYASHI, SUGITA & GODA

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ACQUISITIONS LLC; ES3, LLC, and RICHARD
COHEN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	CIVIL NO. CV03-00385 SOM-LEK
	)	(Copyright)
Plaintiff,)	
vs.	)	DECLARATION OF LEX R. SMITH
	)	IN SUPPORT OF MOTION OF
	)	PREVAILING DEFENDANTS C&S
HAWAIIAN EXPRESS SERVICE,	)	WHOLESALE GROCERS INC., C&S
INC., et al.,	)	ACQUISITION LLC, C&S LOGISTICS
Defendants.	)	LLC, ES3 LLC AND RICHARD
	)	COHEN FOR AWARD OF
	)	ATTORNEYS'
	)	FEES AND FULL COSTS

**DECLARATION OF LEX R. SMITH IN SUPPORT OF MOTION OF
PREVAILING DEFENDANTS C&S WHOLESALE GROCERS INC.,**

**C&S INC., C&S ACQUISITION LLC, C&S LOGISTICS LLC, ES3
LLC AND RICHARD COHEN FOR AWARD OF ATTORNEYS'
FEES AND FULL COSTS**

Lex R. Smith, declares as follows:

1. I am an attorney licensed to practice law in this Court and one of the attorneys representing Defendants C&S LOGISTICS OF HAWAII, LLC, C&S WHOLESALE GROCERS, INC., C&S ACQUISITIONS LLC; ES3, LLC, and RICHARD COHEN. ("C&S") in this case.

2. Unless otherwise indicated, I make this declaration based on my personal knowledge and belief.

3. Attached hereto as Exhibit "A" is a true and correct copy of excerpts from the May 18-19, 2005 Deposition of Wayne Berry.

4. Attached hereto as Exhibit "B" is a true and correct copy of the June 27, 2005 Order Granting Summary Judgment.

5. Attached hereto as Exhibit "C" is the bill of costs listing all actual disbursements made by C&S. I have reviewed and approved the time and charges set forth in the itemization of work performed, and these costs are correctly stated, were reasonable and necessarily incurred as a result of actual work performed in this matter, allowable by law, and were actually paid by and/or billed to C&S.

6. Counsel for C&S and Plaintiff have not conferred on the issue of costs, however, as both C&S and the Plaintiff are attempting to claim fees and costs as the “prevailing party”, agreement on any of the claimed costs appears impossible, and any such conference would be moot.

7. Attached hereto as Exhibit “D” is a chart showing attorneys’ fees and expenses. The time spent and expenses incurred were reasonable and necessary under the circumstances.

8. Attached hereto as Exhibit “E” is a chart showing all nontaxable costs reasonably and necessarily incurred under the circumstances in this case.

9. Some services provided and costs incurred prior to C&S’ dismissal in June, 2005 were equally required in the representation of Fleming and C&S, so charges for attorneys’ fees, non-taxable costs and taxable costs have been divided equally. Accordingly the attached chart reflects only 50% of the total amount charged for such services.

10. I am a partner at Kobayashi, Sugita & Goda, and have been engaged in the practice of law continuously since 1983. My billing rate in this matter is \$200.00, which is below the rates I currently charge other clients.

11. Ann C. Teranishi was an associate at Kobayashi, Sugita & Goda, engaged in the practice of law continuously since 1999. Her billing rate in this matter was \$120.00.

12. Anne E. Lopez was an associate at Kobayashi, Sugita & Goda, engaged in the practice of law continuously since 2002. Her billing rate in this matter was \$120.00.

13. Thomas H. Yee is an associate at Kobayashi, Sugita & Goda, and has been engaged in the practice of law continuously since 1999. His billing rate in this matter is \$150.00.

14. The above rates are below the rates normally charged in the community for similar services as they were not increased during the entire course of the Plaintiff's lengthy copyright claims

15. J Garrett Karr is a paralegal at Kobayashi, Sugita & Goda, and has been practicing as a paralegal from 1994-1995 and continuously since 1997. His billing rate is \$70.00.

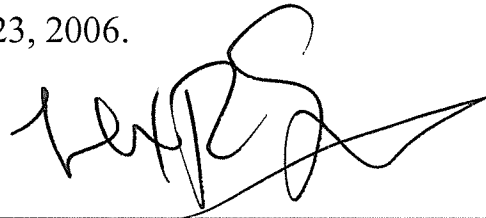
16. Sean G. Nakamura is a paralegal at Kobayashi, Sugita & Goda, and has been practicing as a paralegal continuously from June 2005. His billing rate is \$50.00.

17. Attached hereto as Exhibit "F" is a true and correct copy of page 72 from the publication entitled "2006 Hawaii Book of Lists Volume

43, Issue 43", published by Pacific Business News on December 23, 2005, indicating the ranges of hourly fees for some of the law firms in Honolulu, Hawaii.

I declare under penalty of perjury that the statements made herein are true and correct to the best of my knowledge, information and belief.

DATED: Honolulu, Hawaii, March 23, 2006.

A handwritten signature in black ink, appearing to read 'Lex R. Smith', written over a horizontal line.

LEX R. SMITH